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Attorney**
Gregory D. Underwood

Chief Deputy
Brent A. Johnson

Deputies
Ron Batliner, Jr.
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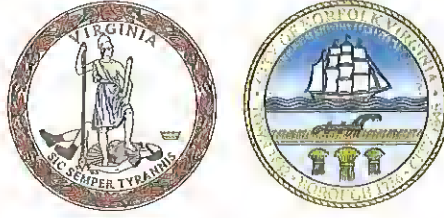
Comptroller
Donna M. Fasanaro

**Director of
Communications**
Amanda M. Howie

IT Office Administrator
Dinitry Rekliter

**Victim/Witness
Assistance Program
Director**
Heather Fuss

COMMONWEALTH OF VIRGINIA



OFFICE OF THE NORFOLK COMMONWEALTH'S ATTORNEY

800 E. City Hall Avenue, Suite 600

Norfolk, Virginia 23510

Phone Number: (757) 664-4444

Fax Number: (757) 664-4445 or (757) 664-4447

Victim/Witness Assistance Program Phone Number: (757) 664-4850

Senior Assistant
Lyn M. Simmons

Assistants
Stephen E. Anthony
David A. Billingsley
Megan M. Blango
Michelle L. Burt
William O. Carrow, Jr.
Ashley B. Coleman
John B. Dunlap
James F. Entas
Richard F. Farley
Ramin Fatehi
Courtney K. Fogarty
Krista L. Fulton
Sheineka C. Hankins
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Gordon C. Ufkes
Leonard J. Webster
Deborah E. Yeng

August 13, 2012

Chief Michael Goldsmith
Norfolk Police Department
100 Brooke Avenue
Norfolk, Virginia 23510

RE: Legal Review of Death of Derrick Shurron Hemphill Jr.
Date of Incident: April 3, 2012
Location of Incident: 7900 block of Diven Arch
Norfolk Police Department Officer Nicholas Fusco
Norfolk Police Department Officer Cynthia Lavertu
Norfolk Police Department Officer William Old

Dear Chief Goldsmith:

I write to inform you I have concluded the legal review of the death of Derrick Shurron Hemphill Jr. who died April 3, 2012 while in the custody of the Norfolk Police Department (NPD). After a thorough review of the investigative file presented to the Office, I find the force used by NPD Patrol Officers Nicholas Fusco, Cynthia Lavertu, and William Old to restrain Mr. Hemphill in the 7900 block of Diven Arch was justified.

On April 3, 2012 at approximately 3:47pm, Lt. Christopher Wolf and CTT1 Terry Pocock of the United States Navy, who were assigned to Commander Operational Test & Evaluation Force (COMOPTEVOR), at 7970 Diven Arch, reported a man entered the quarterdeck (lobby) and claimed to be a janitor. This building is a secured military structure, but its parking lot and lobby are accessible to the public. The man who entered the lobby of the building was later identified as Derrick Shurron Hemphill Jr. Neither Wolf nor Pocock knew Mr. Hemphill. They asked him for identification and Mr. Hemphill responded that he did not have any.

Wolf and Pocock waited for another member of the janitorial staff to confirm whether Mr. Hemphill was in fact a janitor. While waiting for the staff member to arrive, Wolf and Pocock said Mr. Hemphill began talking in a "strange" and "awkward" manner. Wolf and Pocock overheard Mr. Hemphill talking on his cell phone and heard him say something to the extent of, "Could you check on me tomorrow? I might not be around...."

Wolf became concerned for his personal safety, the safety of Pocock, and the safety of Mr. Hemphill. Wolf ordered Pocock to call the police. Wolf and Pocock then engaged Mr. Hemphill in conversation to avoid escalating the situation. As the conversation wore on, Wolf became more concerned because of the nature of the conversation and the "random things" that Mr. Hemphill was saying. It was also clear to Wolf and Pocock at this point that Mr. Hemphill was not a janitor. Norfolk 911 Emergency Operation Center records show a call came in at approximately 4:27pm concerning "an individual that was disoriented and seemed to be rambling things."

At approximately 5:00pm, Officer William Old responded to 7970 Diven Arch and began questioning Mr. Hemphill. Mr. Hemphill did not respond but instead said things like, "I don't want to be part of this anymore and, you know, I don't know what this experiment is...."

Based upon all of the information before him, Officer Old told Mr. Hemphill he was going to place him in custody for his safety. Mr. Hemphill voluntarily stood up and turned around to be handcuffed. After being handcuffed, he became combative and started swinging his elbows. Officer Old took Mr. Hemphill to the ground to restrain him. Officer Old also called for backup. Officer Lavertu was already on her way to the scene.

Once Mr. Hemphill calmed down, Officer Old stood him back up but Mr. Hemphill again began fighting by kicking his legs and swinging his arms. Officer Old took Mr. Hemphill back to the ground and Mr. Hemphill began vomiting. Officer Old brought Mr. Hemphill to his side and into a seated position because he was vomiting. Officer Old contacted paramedics because he suspected Mr. Hemphill was having some type of overdose.

Officer Lavertu responded and assisted Officer Old in an attempt to get Mr. Hemphill outside to wait for paramedics. Mr. Hemphill continued to resist by swinging his arms back and forth. Officers Old and Lavertu took Mr. Hemphill to the ground again and waited for paramedics inside.

Medic 12 responded and paramedics began questioning Mr. Hemphill. The paramedics, Christopher Crowell and John Culpepper, described Mr. Hemphill as sitting on the floor with his hands handcuffed behind his back. They said Mr. Hemphill was acting "nervous" and "frantic" and was not making any sense. Mr. Hemphill told the paramedics "Please do not hurt me." After initially denying paramedics permission to check his vitals, Mr. Hemphill relented and allowed paramedics to examine him. Mr. Hemphill denied any drug use.

During the check of Mr. Hemphill's vitals, Mr. Hemphill suddenly lunged at Paramedic Culpepper and began kicking and fighting. Paramedic Culpepper wrapped his arms around Mr. Hemphill in an effort to defend himself. Paramedic Culpepper sustained a cut to his wrist, multiple bruises to his wrist and arms, and a strained back as a result of Mr. Hemphill's attack. Officers Old and Lavertu intervened.

Officer Lavertu attempted to apply a TARP (Total Appendage Restraint Procedure) restraint to Mr. Hemphill's lower legs but he would not stop kicking. Officer Old ordered Mr. Hemphill to stop resisting or else he would spray him with his OC (Oleoresin Capsicum) spray. Mr. Hemphill replied he did not care and told Officer Old to spray him. Officer Old applied a one second OC spray burst across Mr. Hemphill's eyes. The police and paramedics were able to place the TARP restraint on Mr. Hemphill's legs. Mr. Hemphill was carried outside as he continued to fight. He was able to get one of his legs out of the restraint. Officer Nicholas Fusco arrived and helped get the tarp restraint back on Mr. Hemphill's legs.

Mr. Hemphill was physically placed in the back of an NPD patrol vehicle. After being placed on the seat, Mr. Hemphill worked his way down onto the floorboard. The Officers picked Mr. Hemphill up and placed him back on the seat. They strapped him in using a seatbelt, lap belt, and shoulder belt. Sergeant Walter E. Whiteside of the Norfolk Police Department arrived on scene and saw Mr. Hemphill in the back of a patrol car. According to Sergeant Whiteside, Mr. Hemphill was talking but was not intelligible. Sergeant Whiteside also said that Mr. Hemphill's breathing appeared normal.

Citing Mr. Hemphill's combative demeanor and the need for safety for everyone involved – including Mr. Hemphill – Sergeant Whiteside, Officer Old, and the Paramedics confirmed Officer Old would drive Mr. Hemphill to Sentara Norfolk General Hospital with Medic 12 following Officer Old and Officer Lavertu following Medic 12. Officer Old had already contacted Community Mental Health to do an evaluation of Mr. Hemphill upon their arrival at the hospital. Officer Fusco responded to another call.

One block into the drive Officer Old looked back and saw Mr. Hemphill's head tilted back with his eyes rolling into his head. Officer Old stopped his patrol car and attempted to wake up Mr. Hemphill who was unresponsive. Paramedics Crowell and Culpepper were in their ambulance (Medic 12) behind Officer Old. They stopped the ambulance and placed Mr. Hemphill in the back of the ambulance and transported him to DePaul Hospital. The Paramedics said Mr. Hemphill had frothy sputum, a weak pulse, dilated pupils, and shallow breathing. Mr. Hemphill was declared dead fifteen minutes after arriving at DePaul Hospital.

Dr. Jeffrey Gofton and Dr. Babatunde Stokes performed an autopsy on Mr. Hemphill on April 4, 2012. The autopsy revealed only multiple superficial bruises and abrasions that the Medical Examiners found were consistent with the struggle the Officers and Paramedics had described. According to the Report of Autopsy, the bruises and abrasions were not fatal. There were no signs of any significant blunt force trauma to the head.

The Report of Autopsy also said there was no evidence that the use of OC spray contributed to Mr. Hemphill's death. The toxicology examination revealed synthetic cannabinoid in Mr. Hemphill's system. Furthermore, the Report of Autopsy said there was an indication of the use of synthetic designer drugs and that the use of these drugs is "exceptionally dangerous" and can cause heart damage.

The Report of Autopsy states the cause of Mr. Hemphill's death was, "Sudden cardiac death in association with synthetic cannabinoid use, in addition to acute psychosis, physical exertion, subdual with physical restraint." The last paragraph of the Report of Autopsy makes it clear that the death of Mr. Hemphill was an "accident" and reads as follows, **"With no lethal injury or evidence of asphyxia, the presence of synthetic cannabinoids in Mr. Hemphill's blood is felt to be primarily responsible for his death. The acute psychosis, extreme physical exertion during the altercation with police and medical responders as well as restraint and subdual tactics may have played a role in this unfortunate cascade of events. The manner of death is felt to be best classified as an accident."**

In consideration of all the evidence presented to this Office in the investigative file, it is my conclusion that the use of force by Norfolk Police Officers Nicholas Fusco, Cynthia Lavertu, and William Old was justified, as it was in direct response to the imminent danger presented by Mr. Hemphill, who was under the influence of synthetic cannabinoids. Mr. Hemphill was a danger to himself, the Officers, the Paramedics, the Navy personnel, and any members of the general public who he might have encountered. No further action by this Office will occur in this matter.

Very truly yours,



Gregory D. Underwood
Commonwealth's Attorney